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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

AMY A., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, PATRICK A., VICTORIA A., and ISABELLA A., Appellees.	2 CA-JV 2007-0076 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 15970300

Honorable Patricia G. Escher, Judge
Honorable Jan E. Kearney, Judge

AFFIRMED

Peter G. Schmerl
Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Eric Devany
Mesa
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Department of Economic Security

H O W A R D, Presiding Judge.

¶1 Amy A. appeals from the juvenile court's order of September 18, 2007, terminating her parental rights to her minor children, Patrick A., Victoria A., and Isabella A., on the statutory grounds of abuse, *see* A.R.S. § 8-533(B)(2), and fifteen-month out-of-home placement, *see* § 8-533(B)(8)(b). The court simultaneously terminated the parental rights of the children's father, Guadalupe A., on the same statutory grounds, and we have recently affirmed that termination in Guadalupe's separate appeal. *Guadalupe A. v. Ariz. Dep't of Econ. Sec.*, No. 2 CA-JV 2007-0077 (memorandum decision filed Apr. 4, 2008). Because Amy has presented no appellate issue warranting reversal, we likewise affirm the order terminating her parental rights.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to sustaining the juvenile court's decision." *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12, 153 P.3d 1074, 1078 (App. 2007). Isabella, the youngest of these three children, was born in March 2002. Before her birth, the family consisted of Amy and Guadalupe; their children, Patrick and Victoria, born in 1998 and 1999; and Amy's two older children from previous relationships—Peggy, born in 1988, and Adam, born in 1990. Between 1996 and 2002, the Child Protective Services (CPS) division of the Arizona Department of Economic Security (ADES) had received numerous reports of domestic violence in the family and of Guadalupe's physically abusing Peggy and Adam. At least some of the reports had been substantiated.

¶3 In March 2002, while Amy was hospitalized giving birth to Isabella, Guadalupe physically assaulted Peggy and Adam in the presence of Patrick and Victoria.

Law enforcement officers were called, and CPS took all five children, including the newborn Isabella, into protective custody. Amy admitted the allegations of the dependency petition that followed, and the children were adjudicated dependent in April 2002. One of ADES's central concerns about Amy's parenting was her failure to protect her children from Guadalupe's abuse.

¶4 Under a case plan calling for reunification of the family, Amy participated sufficiently in the services ADES offered her; consequently, Isabella was returned to her custody in August 2002, and Patrick and Victoria were returned in December of that year. In May 2003, however, allegations surfaced that Guadalupe had inappropriately touched three-year-old Victoria and had similarly abused Peggy over a period of time, years earlier, when Peggy was between five and seven years old. CPS investigated, found the allegations credible, and in June 2003 required Guadalupe to move out of the family home and have no unsupervised contact with the children.

¶5 Between June 2003 and March 2005, Amy participated with varying degrees of consistency and with variable success in the tasks required by her case plan. The therapist she began seeing irregularly in the fall of 2003 testified that, after October 2004, Amy's attendance became more regular and she began to make progress in therapy. But, in March 2005, the CPS case manager confirmed a suspicion that Amy had been allowing unauthorized contact between Guadalupe and the children. Believing that placed the children at risk because Guadalupe had resolved none of the sexual abuse issues that had arisen in 2003, the case manager removed the children from Amy's custody on March 31, 2005.

¶6 Despite the children's removal from the home, CPS continued to work with Amy toward the goal of reunifying the family. Between March and September 2005, Amy participated in services, was compliant with her case plan, and appeared to be making progress. At a permanency hearing on September 22, 2005, the juvenile court ordered Amy and Guadalupe to have no contact with each other that was not related to the dependency proceeding or otherwise court-approved.

¶7 Between September 2005 and October 2006, Amy reportedly made steady progress in both individual and family therapy. Despite lingering concerns that she might still be having contact with Guadalupe, by July 2006, Amy had been permitted unsupervised visitation with the children and was "demonstrating an ability to parent and protect [them.]" By August, CPS was actively working toward returning the children to her before the end of 2006.

¶8 By mid-November, the children's gradual transition from their foster parents back to Amy was well underway. On the evening of November 16, Christal Underwood, the CPS parent aide and visit supervisor who had worked with the family for roughly eighteen months, was downtown between 6:00 and 6:30 p.m. when she happened to see Amy and Guadalupe casually walking, talking, and laughing together near the bus station. When the aide confronted them, Guadalupe promptly disappeared, and Amy became agitated and upset. She claimed she had just been attacked, although she could not say by whom. Amy later made telephone calls to the CPS hotline, her case manager, Patrick's foster mother, and the police, augmenting her story that her contact with Guadalupe had been inadvertent but also giving conflicting accounts of what had transpired.

¶9 Thereafter, the case manager wrote in a progress report to the court that "the extent to which [Amy] ha[d] attempted to cover her tracks about what happened on the evening of [November 16, 2006,]" made it clear that "she cannot be trusted and cannot protect the children." As a result, after providing Amy with intensive rehabilitative services for more than four and one-half years, CPS recommended the case plan be changed from reunification with Amy to severance and adoption. At a dependency review hearing held on March 26, 2007, the juvenile court approved the change and directed ADES to file a motion to terminate both parents' rights.

Issues and Discussion

¶10 In the first of five identified issues, Amy contends the presiding judge erred in denying her motion for a change of judge. Ignoring Rule 106(A), Ariz. R. P. Juv. Ct., and Rule 13(a), Ariz. R. Civ. App. P., Amy has included in her one-paragraph argument no citations to the record identifying the specific comments or actions of the judge that she contends merited a change of judge.[1] Instead, the factual basis for her argument consists entirely of these two unsupported statements: "According to the appellant's [trial counsel's] affidavit, the judge 'would not, could not, cannot or did not believe anything the mother says,'" and "[t]he judge's view of the appellant became so tainted that appellant could not reasonably have expected to have a fair trial."

¶11 We will not consider factual assertions that are unaccompanied by citations to the record. *See, e.g., State v. 1810 E. Second Ave.*, 193 Ariz. 1, 2 n.2, 969 P.2d 166, 167

[1]Indeed, it is ADES's answering brief that directs us to the motion for change of judge Amy filed in April 2007 and to the presiding judge's denial of her motion.

n.2 (App. 1997) (appellate court will not consider assertions unsupported by citation to the record); *In re Estate of Killen*, 188 Ariz. 562, 563 n.1, 937 P.2d 1368, 1369 n.1 (App. 1996) (disregarding appellant's statement of facts, which contained "few citations to the record"); *Spillios v. Green*, 137 Ariz. 443, 447, 671 P.2d 421, 425 (App. 1983) (failure to cite location in transcript where allegedly erroneous ruling occurred constitutes waiver of argument; "[w]e have no obligation to search the record for this error"). Nor will we consider legal arguments that are not fully developed or lack citations of authority. *Ness v. W. Sec. Life Ins. Co.*, 174 Ariz. 497, 503, 851 P.2d 122, 128 (App. 1992); *Modular Sys., Inc. v. Naisbitt*, 114 Ariz. 582, 587, 562 P.2d 1080, 1085 (App. 1977).

¶12 In short, by failing to develop, support, and thus properly present her assertion of error, Amy has given us no reason to believe the presiding judge abused her discretion when she ruled:

> The basis of [Amy]'s claim of bias includes no extra-judicial actions, but rests entirely upon the assigned judge's participation in this case. . . . [Amy] has not alleged facts which could show that the assigned judge has displayed such deep-seated favoritism or antagonism that would make a fair judgment impossible, and has thus presented no legally sufficient grounds for a change of judge.

See generally Ariz. R. P. Juv. Ct. 2; *State v. Salazar*, 182 Ariz. 604, 607-08, 898 P.2d 982, 985-86 (App. 1995) (ruling on motion for change of judge disturbed only for abuse of discretion).

¶13 In her second issue, Amy contends the juvenile court erred in finding clear and convincing evidence establishing abuse pursuant to § 8-533(B)(2) as a ground for terminating her parental rights. Her argument consists, first, of highlighting the progress she

had made, both individually and as a parent, over the five-year course of the dependency proceeding; second, claiming she had not suddenly lost all the parenting skills CPS agreed she had acquired; and, third, asserting "[t]here is no evidence that [she] cannot protect the children from the father from abuse [sic] and no evidence . . . that she's not fit to parent."

¶14 In arguing that the children were not physically present and therefore were not harmed by "whatever occurred" when their parents were together on November 16, 2006, Amy overlooks several critical points. Not least are that her contact with Guadalupe was expressly prohibited by court order; that she had a history of allowing unauthorized contact between Guadalupe and the children; that she had repeatedly been dishonest in denying any ongoing contact with Guadalupe in response to the earlier suspicions and inquiries of the case manager; and that the central focus of her individual therapy had been on developing emotional independence from Guadalupe and cultivating an "understanding [of] the safety issues that led to her involvement with CPS, her failure to protect her children and being able to identify the risks that [Guadalupe] poses to herself and to her children." Her arguments therefore are unfounded.

¶15 In fact, Amy's arguments about her progress are not relevant to the discussion of abuse under § 8-533(B)(2) as a statutory ground for severance.[2] Instead, they are actually pertinent to a different statutory ground, fifteen-month out-of-home placement under § 8-

[2]Pursuant to § 8-533(B)(2), provided the best interests of the child will be served, a parent's rights can be terminated if "the parent has neglected or wilfully abused a child. This abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child." *See also* A.R.S. §§ 8-201(2) (defining abuse), 8-201(21) (defining neglect).

533(B)(8)(b), bearing as they do upon her inability after roughly five years of receiving reunification services "to remedy the circumstances that cause the child[ren] to be in an out-of-home placement" and upon the existence of a "substantial likelihood" that Amy would "not be capable of exercising proper and effective parental care and control in the near future." § 8-533(B)(8)(b).

¶16 The record amply supports the termination of Amy's rights under § 8-533(B)(8)(b), based on the children's court-ordered placement outside the home for a cumulative period longer than fifteen months. *See generally Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002) ("On review, . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings."); *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004) (reviewing court will affirm severance order unless clearly erroneous). Amy asserts in passing that ADES had failed to make the diligent efforts to provide reunification services that § 8-533(B)(8) requires, but she does so by "incorporat[ing]" the standard of review and arguments set forth in Guadalupe's opening brief in his separate appeal, No. 2 CA-JV 2007-0077. We need not address issues contained in other documents. *See* Ariz. R. P. Juv. Ct. 106(A); Ariz. R. Civ. App. P. 13(a).

¶17 Moreover, the issue Guadalupe raised was specific to his situation and irrelevant to Amy's. Guadalupe's diligent-efforts contention was that ADES had prematurely and improperly terminated his visitation rights for his failure to address or resolve the sexual abuse allegations against him. Not only does Guadalupe's claim have no direct relevance to Amy, but we have now specifically rejected his contention on appeal and

held that "[t]he record supports the juvenile court's finding that ADES had 'made a diligent effort to provide appropriate reunification services.'" *Guadalupe A.*, No. 2 CA-JV 2007-0077, ¶ 15; *see In re Sabino R.*, 198 Ariz. 424, ¶ 4, 10 P.3d 1211, 1212 (App. 2000) (court may "take judicial notice of its own records or those of another action tried in the same court").

¶18 Additionally, Amy re-alleges her own "prior arguments." But, her further "realleg[ing] and reaffirm[ing] all of the prior arguments made in [her own opening] brief" is not remotely adequate to secure review of an issue she only nominally presents and, therefore, has waived. *See* Ariz. R. P. Juv. Ct. 106(A); Ariz. R. Civ. App. P. 13(a). And once again her re-alleged prior arguments are waived.

¶19 We do not address Amy's fourth issue, which consists of nothing more than her conclusory assertion in the argument heading that she had successfully remedied the circumstances that caused the children to be in an out-of-home placement. She again purports to incorporate the arguments in Guadalupe's opening brief, but—as we have noted—his arguments do not pertain to Amy's circumstances.

¶20 Finally, Amy contends the juvenile court erred in finding severance of her rights to be in the best interests of her children. With only a single citation to the record and no citation of supporting legal authority, she contends ADES failed to prove by a preponderance of the evidence that the children's best interests favored severance because "the evidence at trial . . . was that the children were bonded to their mother."

¶21 As we noted in addressing Guadalupe's similar argument in his appeal, ADES could establish that terminating Amy's rights was in the children's best interests either by

showing "an affirmative benefit to the child[ren] by removal or a detriment to the child[ren] by continuing in the relationship." *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 557, 944 P.2d 68, 72 (App. 1997). Freeing a child for adoption when a current adoptive placement exists is one example of a benefit to the child conferred by severance. *See In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990); *In re Maricopa County Juv. Action No. JS-6520*, 157 Ariz. 238, 243, 756 P.2d 335, 340 (App. 1988).

¶22 In concluding ADES had shown by a preponderance of the evidence that the best interests of the children favored severing Amy's rights, the juvenile court found that all three children were in stable, loving, adoptive placements that "w[ould] facilitate sibling contact in the future." Because reasonable evidence in the record supports those findings, we will not disturb the court's conclusion that terminating Amy's rights was in her children's best interests.

¶23 We affirm the juvenile court's order of September 19, 2007, terminating Amy's parental rights to Patrick, Victoria, and Isabella.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge